

Prabhjot Singh (Migration) [2021] AATA 1220 (22 April 2021)

DECISION RECORD

DIVISION:	Migration & Refugee Division
APPLICANT:	Mr Prabhjot Singh
CASE NUMBER:	2012031
HOME AFFAIRS REFERENCE(S):	BCC2019/5003402
MEMBER:	Andrew McLean Williams
DATE:	22 April 2021
PLACE OF DECISION:	Brisbane
DECISION:	The Tribunal affirms the decision to cancel the applicant's Subclass 482 - Temporary Skill Shortage visa.

Statement made on 22 April 2021 at 4:32pm

CATCHWORDS

MIGRATION – cancellation – Temporary Skill Shortage (Class GK) visa – Subclass 482 (Temporary Skill Shortage) – secondary applicant to wife's visa – now divorced – consent to decision without hearing – discretion to cancel visa – intention to apply as dependent to new wife's visa but unable because of COVID-19 restrictions – decision under review affirmed

LEGISLATION

Migration Act 1958 (Cth), s 116(1)(a), (3)
Migration Regulations 1994 (Cth), r 1.12(2)(a)
Administrative Appeals Tribunal Act 1975 (Cth), s 34J

STATEMENT OF DECISION AND REASONS

APPLICATION FOR REVIEW

1. This is an application for review of a decision made by a delegate of the Minister of Home Affairs on 21 July 2020 cancelling the applicant's Subclass 482 - Temporary Skill Shortage visa, under s.116 of the *Migration Act 1958* ('the Act').
2. The delegate cancelled the visa under s.116(1)(a) on the basis that the visa had been granted because the applicant was in a genuine and continuing relationship with his then wife, Ms Parveen Rani who is the holder of a Temporary Skill Shortage (subclass 482) visa. The applicant and Ms Rani have since divorced, a matter that was advised to the Department by Ms Rani on 29 January 2020.
3. The issue in the present case is whether that ground for cancellation is made out, and if so, whether the visa should be cancelled.
4. This matter was originally scheduled for a review hearing before the Tribunal on 29 January 2021. The applicant was represented before the Tribunal by Ms Suzanne Wheel (MARN 0316130) of Ausway Migration. On 22 January 2021, Ms Wheel wrote to the Tribunal on behalf the applicant and requested that the Tribunal dispense with the hearing and instead proceed to make an 'on the papers' decision pursuant to s.34J of the *Administrative Appeals Act 1975* (Cth).
5. For the following reasons, the Tribunal has concluded that the decision to cancel the applicant's visa should be **affirmed**.

CONSIDERATION OF CLAIMS AND EVIDENCE

6. Under s.116 of the Act, the Minister may cancel a visa if he or she is satisfied that certain grounds specified in that provision are made out. Relevantly, these include the ground set out in s.116(1)(a). If satisfied that the ground for cancellation is made out, the decision maker must proceed to consider whether the visa should be cancelled, having regard to all the relevant circumstances, which may include matters of government policy.

Does the ground for cancellation exist?

7. A visa may be cancelled under s.116(1)(a) if the Minister is satisfied that the decision to grant the visa was based, wholly or partly, on a particular fact or circumstance that is no longer the case or no longer exists.
8. Information was provided to the Department by Ms Parveen Rani on 29 January 2020 indicating that she was no longer married to, or otherwise in a relationship with, the applicant. The applicant's visa had been granted in part because he met the secondary visa eligibility criteria by reason that he was a member of the family unit of Ms Parveen Rani as prescribed in paragraph 2(a) of regulation 1.12 of the *Migration Regulations 1994* ('the Regulations'). Yet now, in light of the information provided by Ms Rani, that relevant circumstance no longer exists.
9. For these reasons, the Tribunal is satisfied that the ground for cancellation in s.116(1)(a) exists. As that ground does not require mandatory cancellation under s.116(3), the Tribunal must proceed to consider whether the visa should be cancelled.

Consideration of the cancellation discretion

10. There are no matters specified in the Act or Regulations that must be considered in the exercise of this discretion. The Tribunal has had regard to the circumstances of this case, including matters raised by the applicant, and matters in the Department's Procedures Advice Manual (PAM3) 'General visa cancellation powers'.
11. A notice of intention to consider cancellation of the visa ('NOICC') was sent to the applicant on 24 June 2020, inviting submissions from him as to why that should not occur. The applicant took up the invitation, and a submission in writing to the department, in the form of an e-mail with attachments, on 5 July 2020.
12. In that submission the applicant confirms that he was officially divorced from Parveen Rani on 24 February 2020, and provides further evidence that he has since re-married, to Ms Manpreet Kaur, on 1 March 2020. The applicant indicates that Ms Manpreet Kaur is in Australia on a student visa.
13. In terms of reasons as to why the visa ought not be cancelled, the applicant submitted that:
 - The divorce was a 'one-sided matter', as he himself did not wish to be divorced from Parveen Rani;
 - The applicant has since re-married, to Manpreet Kaur, and the applicant had intended to lodge a dependent visa attached to Ms Manpreet Kaur's visa, yet was precluded from doing that due to the community restrictions brought about by Covid-19;
 - The applicant had not ever deliberately breached any visa conditions whilst in Australia.

14. Purpose of the applicant's travel to and stay in Australia:

15. The applicant was granted a dependent Temporary Skill Shortage (subclass 482) visa on the basis of his being in a genuine and continuing relationship with the primary visa holder, his then spouse Ms Parveen Rani. In light of the uncontested information regarding their subsequent divorce, that purpose for the original travel to Australia and reasons for staying in Australia are no longer operative. The Tribunal attaches significant determinative weight to this consideration as affording grounds for visa cancellation.

16. Extent of the applicant's compliance with visa conditions:

17. There is no evidence before the Tribunal to suggest that the applicant has been other than compliant with his visa conditions. Some weight against visa cancellation is now attached to this consideration by the Tribunal.

18. Degree of hardship that may be caused to the applicant and family members in consequence of visa cancellation:

19. The applicant has provided no specific evidence of likely hardship for either himself or his new wife or other family members in the event that the applicant's visa is now cancelled. Nevertheless, the Tribunal considers that some hardship and inconvenience may arise in the event that the applicant's visa is cancelled. Some of that hardship may be ameliorated, in the event that the applicant applies for a temporary bridging visa. The Tribunal now attaches some, albeit only very modest weight to this consideration as a matter factoring against visa cancellation.

20. **Circumstances in which the ground for visa cancellation arose:**

21. The grounds for visa cancellation arose because the applicant became divorced from the primary visa holder, Ms Parveen Rani. Although the applicant has submitted that the divorce was a “one sided” affair and that he himself did not wish to be divorced, it is the case that Australia has a no-fault divorce system. The fact of that divorce means that one of the grounds for the conferral of the visa ceases to exist. The Tribunal now attaches significant determinative weight to this consideration.

22. **Applicant’s past and present behaviour towards the Department:**

23. There is no evidence before the Tribunal suggesting that the applicant has ever been uncooperative with the Department. Some weight against visa cancellation is attached to this consideration by the Tribunal.

24. **Whether there are any persons in Australia whose visas would, or may be cancelled under s.140:**

25. Departmental records reveal the applicant to have no dependents in Australia whose visa may be subject to consequential cancellation under s.140. No weight is attached to this consideration by the Tribunal.

26. **Legal consequences of a decision to cancel the visa**

27. In the event that the visa is cancelled, the applicant will become an unlawful non-citizen and may thereby become liable to immigration detention and forced removal from Australia. That outcome may be avoided, in the event that the applicant applies for a bridging visa to enable him to remain in Australia temporarily. Cancellation of the visa under these grounds will not give rise to any penalties under Public Interest Criteria 4013, such that there will not be any impediments to the applicant applying for a further visa in the future. Overall, only very limited weight is attached to this consideration by the Tribunal.

28. **Australia’s international obligations**

29. The applicant has not raised any matters, particularly matters in relation to the custody of the child Richard Abraham Mattu, who is understood to be the nephew of the applicant’s former wife. Only very limited weight is attached to this consideration by the Tribunal.

30. **Any other relevant matters:**

31. There would not appear to be any other relevant matters. As such, no weight is attached to this consideration by the Tribunal.
32. Considering the circumstances as a whole, the Tribunal concludes that the visa **should** be cancelled.

DECISION

33. The Tribunal affirms the decision to cancel the applicant’s Subclass 482 - Temporary Skill Shortage visa.

Andrew McLean Williams
Member